

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

THOMAS UNGER

PLAINTIFF

v.

No. 4:05CV246-P-A

RULEVILLE POLICE DEPARTMENT, ET AL.

DEFENDANTS

ORDER OF DISMISSAL

The court, *sua sponte*, takes up the dismissal of the plaintiff's case filed under 42 U.S.C. § 1983. The plaintiff alleges that the defendants falsified charges of burglary against him. The charges have been used as grounds to find that the plaintiff violated the terms of his earned release supervision; the plaintiff has been returned to Mississippi Department of Corrections custody.

The plaintiff, a prisoner proceeding *pro se*, seeks review of the grounds used to terminate his earned release supervision under the laws of Mississippi. The plaintiff does not challenge the conditions of his confinement, as required under 42 U.S.C. § 1983; he instead challenges the fact and duration of his confinement, a claim which he should have brought as a *habeas corpus* claim under 28 U.S.C. § 2254. A claim under 42 U.S.C. § 1983 does not accrue until the conviction or sentence – or decision to revoke supervise release – has been invalidated. *Heck v. Humphrey*, 512 U.S. 477, 489-90 (1994). As the plaintiff has not shown that his conviction or sentence has been reversed, expunged, invalidated or impugned by the grant of a writ of *habeas corpus*, his claim under 42 U.S.C. § 1983 is not ripe for consideration and should be dismissed without prejudice to his ability to file a *habeas corpus* claim under 28 U.S.C. § 2254.

SO ORDERED, this the 2nd day of December, 2005.

/s/ W. Allen Pepper, Jr.

W. ALLEN PEPPER, JR.

UNITED STATES DISTRICT JUDGE